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March 9, 2012

via hand delivery

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: Bull Street Baptist Church Request for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0257
CG Docket No. 06-181**

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications of the Deaf and Hard of Hearing Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this Opposition to the petition of Bull Street Baptist Church ("Bull Street") to exempt its programming from the Commission's closed captioning rules, 47 C.F.R. § 79.1 (2010) ("Petition").¹ Bull

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, Bull Street Baptist Church*, Case No. CGB-CC-0257, CG Docket No. 06-181 (Feb. 8, 2012), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0208/DA-12-165A1.pdf; *Petition for Exemption from Closed Captioning Requirement for Bull Street Baptist Church*, Case No. CGB-CC-0257, CG Docket No. 06-181 (Jan. 18, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021755305> [hereinafter *Bull Street Petition*].

Street has provided insufficient information to demonstrate that it cannot afford to caption its programming.

Consumer Groups acknowledge Bull Street's efforts to spread "the life-changing message of the Gospel" to the city of Savannah.² Unfortunately, the requested exemption would deny equal access to Bull Street's programming to members of the community who are deaf or hard of hearing. Maximizing accessibility through the comprehensive use of closed captions is a critical step in ensuring that all viewers who are deaf or hard of hearing can experience the important benefits of video programming on equal terms with their hearing peers.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific evidence that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

The Petition does not meet the statutory requirements necessary to support an exemption from the closed captioning rules. Bull Street has provided insufficient information to demonstrate, or for the Commission to determine, that it cannot afford to caption its programming. Accordingly, Consumer Groups recommend that Bull Street be given 45 days either to comply with the closed captioning rules or to re-apply with sufficient information to allow the Commission and the public to determine whether Bull Street's request meets the legal standard for granting an exemption.

² *Bull Street Petition*, *supra* note 1, at 2.

Under section 713(d)(3) of the Communications Act of 1934 (“1934 Act”),³ as added by the 1996 Act and amended by section 202(c) of the CVAA, “a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome.” In its October 20, 2011 Interim Standard Order, the Commission directed the Consumer and Governmental Affairs Bureau to evaluate all exemption petitions filed subsequent to October 8, 2010 using the “undue burden” standard in section 713(e) of the 1934 Act, pursuant to the Commission’s existing rules in 47 C.F.R. § 79.1(f)(2)-(3).⁴

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁵ If a petitioner sufficiently demonstrates such an inability, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning its

³ Pub. L. No. 416, ch. 652, 48 Stat. 1064 (1934) (codified as amended at 27 U.S.C. 613(d)(3)).

⁴ *Order, Interpretation of Economically Burdensome Standard*, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,961, ¶ 37 (Oct. 20, 2011), http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf. The Commission proposed to finalize this interim directive in a Notice of Proposed Rulemaking released with the 2011 ISO. *Interpretation of Economically Burdensome Standard*, CG Docket No. 11-175, 26 FCC Rcd. 14,941, 14,961-62, ¶¶ 38-39 (proposed Oct. 20, 2011), 76 Fed. Reg. 67,397 (Nov. 1, 2011), http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf. See also 2011 ISO at 14,960, ¶ 36. In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. E.g., *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers for Christ Ministries*, Case Nos. CGB-CC-0005 and CGB-CC-0007, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,955-56, ¶ 28 (Oct. 20, 2011) [hereinafter *Anglers 2011*].

⁵ See *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,955-56, ¶ 28.

programming.⁶ Where a petition fails to make either of the foregoing showings, it fails to demonstrate that providing captions would pose an undue burden, and the Commission must dismiss the petition.⁷

I. Bull Street's Ability to Afford Captioning

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both detailed information regarding the petitioner's financial status and verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers.⁸ Both showings are essential to enable the Commission and the public to verify that the petitioner in fact cannot afford to caption its programming and eliminate the possibilities that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning services.

A. Bull Street's Financial Status

A successful petition requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation "from which its financial condition can be assessed."⁹ When evaluating the financial status of a petition, the Commission "take[s] into account the overall financial resources of the provider or program owner," not "only the resources available for a specific program."¹⁰ While Bull Street's financial sheet shows that it operated at a very slight loss in 2011, it also shows total revenues of more than over \$780,000 which could

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ E.g., *Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005) (hereinafter *Survivors*), cited with approval in *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

¹⁰ *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,950, ¶ 17.

potentially have been reallocated to accommodate captioning.¹¹ Moreover, Bull Street provides no information about existing assets that might be leveraged to caption its programming.

Bull Street also asserts its tax-exempt status as evidence of its financial status.¹² While a petitioner's non-profit status may bear on its financial resources, the Commission does not "grant [petitioners] favorable exemption treatment because of their non-profit status."¹³

B. The Costs of Captioning Bull Street's Programming

To successfully demonstrate that captioning would pose an undue burden in light of a petitioner's financial status, the petitioner must demonstrate a concerted effort to determine "the most reasonable price" for captioning its programming.¹⁴ To allow the Commission and the public to evaluate whether a petitioner's cost estimates are reasonable, it is essential that a petitioner provide, at a bare minimum, detailed information about the basis and validity of cost estimates for captioning, such as competitive hourly rate quotes and associated correspondence from several established captioning providers.¹⁵ Bull Street offers only one captioning estimate from a single captioning service, rather than quotes from multiple captioning providers.¹⁶

¹¹ *Bull Street Petition*, *supra* note 1, at Exhibit B.

¹² *Bull Street Petition*, *supra* note 1, at 3; Exhibit A.

¹³ *Survivors*, *supra* note 9, at 14,951, ¶ 18.

¹⁴ See *The Wild Outdoors*, 16 FCC Rcd. 13,611, 13,613 ¶ 7 (2001), *cited with approval in Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,956, ¶ 28 n.101.

¹⁵ Compare, e.g., *Outland Sports*, 16 FCC Rcd. at 13,607, ¶ 7 (2001) (approving of a petitioner's inclusion of rate quotes and associated correspondence from at least three captioning providers in its petition) with *Wild Outdoors I*, 16 FCC Rcd. at 13,613, ¶ 7 (disapproving of a petitioner's bald assertion of the cost to caption a program without supporting evidence). Consumer Groups agree with the Commission's suggestion in *Outland Sports* that a successful petitioner must include competitive rate quotes from at least three captioning providers.

¹⁶ *Bull Street Petition*, *supra* note 1, at 1; Exhibit C.

Accordingly, Bull Street has not demonstrated a concerted effort to seek affordable alternatives that might offer it the ability to caption its programming.

II. Alternative Avenues for Captioning Assistance

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.¹⁷ To support a successful petition, a petitioner must provide documentation that it has sought assistance from other parties involved with the distribution of its programming.¹⁸ Bull Street's petition does not include any correspondence or make any statements demonstrating that it sent inquiries to or engaged in serious negotiations with its distributor regarding captioning support and has been refused assistance.

A petitioner must also demonstrate that it has sought out sponsorships or other sources of revenue to cover the cost of captioning its program and is unable to obtain alternative means of funding captions for its programming.¹⁹ Bull Street provides no evidence, documentation, or correspondence to substantiate its claim that it has unsuccessfully sought additional sponsorships and explored other sources of revenue for captioning its program.²⁰

III. Conclusion

Bull Street's petition does not include sufficient information to conclude that Bull Street cannot afford to caption its programming or that it has exhausted all available alternative options for providing captioning. Because the Petition fails to conclusively

¹⁷ See *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

¹⁸ See, e.g., *Engel's Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd. 6867, 6868, ¶ 3 (MB 2004), *cited with approval in Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

¹⁹ See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7 (2001), *cited with approval in Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

²⁰ *Bull Street*, *supra* note 1, at 2.

demonstrate that it would be unduly burdensome for Bull Street to caption its programming under the high standard demanded under the 1996 Act and the CVAA, we respectfully urge the Commission give Bull Street 45 days either to comply with the closed captioning rules or to re-apply with sufficient information to allow the Commission and the public to determine whether Bull Street's request meets the legal standard for granting an exemption.

Respectfully submitted,



Blake E. Reid, Esq.[†]

March 9, 2012

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[†] Counsel thanks Georgetown Law student clinicians Allyn Ginns and Cathie Tong for their assistance in preparing these comments.

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CERTIFICATION

Pursuant to 47 C.F.R. § 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied in the foregoing comment, these facts and considerations are true and correct to the best of my knowledge.

A handwritten signature in cursive script that reads "Claude L. Stout".

Claude Stout
March 9, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 9, 2012, pursuant to the Commission's aforementioned Public Request for Comment, a copy of the foregoing Opposition was served by first class U.S. mail, postage prepaid, upon the petitioner:

Bull Street Baptist Church
17 E Anderson St.
Savannah, GA 31401

A handwritten signature in black ink, appearing to read "Niko Perazich", written over a horizontal line.

Niko Perazich
March 9, 2012